**Burger King Corporation *and* United Labor Unions, Local 222.** Cases 7-CA-19356 and 7-CA-19465

December 16, 1982

## DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On July 19, 1982, Administrative Law Judge Walter H. Maloney issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, the Charging Party filed exceptions and a supporting brief, and Respondent filed cross-exceptions and a supporting brief and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified.

The Administrative Law Judge concluded that Respondent did not violate Section 8(a)(1) of the Act when a management official ordered Gloria Griggs to remove the United Labor Unions button she was wearing.[3] The General Counsel and the Charging Party have excepted to that conclusion. We find merit in that exception.

Respondent provides all its food-handling employees with identical uniforms, which they are required to wear on the job and to keep in a clean, well-pressed condition. A company regulation, set out in a handbook provided to all employees, provides that: "Only company approved name tags, buttons and alterations in uniforms are allowed." Restaurant Manager Peggy Amato enforced this policy, repeatedly warning employees that the wearing of buttons or insignias was prohibited and regularly requiring employees to remove any buttons or insignias while at work. It is undisputed that, at all relevant times, employee Gloria Griggs was assigned to work the restaurant's drive-through window. At that job, she had direct and continuous contact with customers. On May 28, 1981, Griggs was wearing on her work jacket a small (1-1/2-inch diameter) yellow and green button imprinted with "ULU—United Labor Unions." In the afternoon, Regional Project Manager Gregg Barnhart saw Grigg's button and asked her to remove it from her jacket. She did so.

It is well settled that, in the absence of special circumstances, an employee's wearing a union button at work is protected activity under Section 7 of the Act. *Republican Aviation Corporation* v. *N.L.R.B.*, 324 U.S 793 (1945). Respondent argues, and the Administrative Law Judge concluded, that Griggs' contact with customers constituted such a special circumstance, reasoning that Respondent seeks to project a neat, standard appearance by its employees and is therefore justified in prohibiting employees with substantial customer contact from wearing union buttons. However, "mere contact with customers is not a basis for barring the wearing of union buttons," and absent "substantial evidence that the button affected Respondent's business or that the prohibition was necessary to maintain employee discipline," requiring the removal of such a small, nonprovocative button is unlawful. *Virginia Electric and Power Company*, 260 NLRB 408 (1982). Accord: *Floridan Hotel of Tampa, Inc.*, 137 NLRB 1484, 1486 (1962); *Consolidated Casinos Corp. Sahara Division*, 164 NLRB 950, 950–951 (1967). Respondent here has shown nothing more than that Griggs had customer contact. This does not, in and of itself, constitute a "special circum-

[1] Respondent and the Charging Party have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In adopting the Administrative Law Judge's conclusion that Respondent did not unlawfully suspend, discharge, or refuse to reemploy participants in the May 28, 1981, incident, we disavow his statement that after being instructed to leave by Manager Amato and Assistant Manager Hamilton everyone in the group requesting recognition became trespassers and were engaging in criminal activity. As we have stated previously, whether or not conduct "constitutes a trespass is a matter for the state and local authorities and we make no comment thereon." *Retail Store Employees Local 1001 (Levitz Furniture Company of Washington, Inc.)*, 203 NLRB 580, 581 (1973).

Member Fanning notes that the situation here is far different from that in *G.T.A. Enterprises, Inc., d/b/a "Restaurant Horikawa,"* 260 NLRB 197 (1982), in which he dissented. There, in his view, the group was orderly, the demonstration did not disrupt or interrupt the operation of the restaurant, inconvenience to diners was virtually nonexistent, and the demonstrators left when asked to do so. None of those factors is present in the instant case. Thus, the group here was boisterous, disorderly, and physically intimidating. The restaurant's operations ceased for over an hour at peak time, diners had to leave the restaurant, prospective diners were turned away, and—importantly—the participants did not leave when asked to do so and only vacated the restaurant when the police arrived. Under these circumstances, Member Fanning finds the activity of the participants to be unprotected. Compare *Larand Leisurelies, Inc.*, 213 NLRB 197 (1974).

[3] The Administrative Law Judge did find that the same management official's order to Cynthia Diane Williams to remove her United Labor Unions button violated Sec. 8(a)(1). Williams worked in the kitchen of the restaurant preparing french fries and hamburgers, had virtually no contact with customers, and was not in the general view of customers. No exceptions were filed to this finding.

stance" and does not justify prohibiting employees with customer contact from wearing such a union button. *Eckerd's Market, Inc.*, 183 NLRB 337, 337-338 (1970). Therefore we find that Respondent, by Barnhart's request to Griggs to remove her button, unlawfully interfered with Griggs' right to wear a union button at work and violated Section 8(a)(1) of the Act.[4]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Burger King Corporation, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

"(b) Instructing employees to refrain from wearing union buttons or other union insignias at their place of work."

2. Substitute the attached notice for that of the Administrative Law Judge.

[4] The Administrative Law Judge relied on *United Parcel Service, Inc.*, 195 NLRB 441 (1972), and *Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company*, 256 NLRB 520 (1981), for his finding of no violation as to Griggs. However, in neither of those cases did the employer—as here—prohibit employees who had customer contact from wearing small innocuous union buttons. In *United Parcel*, the employer did *not* ban all union buttons: uniformed drivers were permitted to wear their current union dues button, which was 1-inch in diameter, even when they were delivering or having other customer contact. The employer did refuse to permit uniformed drivers to wear a 2-1/4-inch "VOTE JACK RYAN LOCAL 294" button. Noting that "the guaranteed right of the UPS driver to wear a union button in public [was] protected and sustained" by the company's allowing drivers to wear the union dues button, the Administrative Law Judge, with Board affirmance, concluded that the company's restriction "against the drivers wearing the Ryan button on the route is reasonable and just." *United Parcel* at 450. Similarly, in *Houston Coca Cola* the employer did *not* ban all union buttons. The uncontradicted testimony of Executive Vice President Gary Sligar, employee Mamie Harrell, and installation driver Reyes Ramirez was that the company prohibited employees from wearing various large (4- to 5-inch) brightly colored Teamsters daisies and patches, but that it did *not* ask employees, including those who might have customer contact, to remove a small (1-1/2-inch) "VOTE TEAMSTERS" button when they wore it. Thus, in both *United Parcel* and *Houston Coca Cola*, employees with customer contact were allowed to wear small unprovocative union buttons closely resembling the small unprovocative union button which Respondent here prohibited an employee with customer contact from wearing. Those two decisions therefore do not in our view mandate a finding in this case that Respondent's complete ban on wearing union buttons was lawful.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT coercively interrogate employees concerning their union sympathies.

WE WILL NOT instruct employees to refrain from wearing union buttons or insignias.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

BURGER KING CORPORATION

## DECISION

### STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: This case came on for hearing before me in Detroit, Michigan, upon a consolidated unfair labor practice complaint,[1] issued by the Regional Director for Region 7 of the Board which alleges that Burger King Corporation[2] (herein Respondent) violated Section 8(a)(1) and (3) of the Act. More particularly, the consolidated complaint alleges that Respondent suspended six named employees and either discharged or refused to reemploy Cynthia Diane Williams and Luther Wyatt because they engaged in protected concerted activities and union activities. The consolidated complaint further alleges that Respondent coercively interrogated employees concern-

[1] The principal docket entries in this case are as follows:

Charge filed on May 28, 1981, in Case 7-CA-19356 by United Labor Unions, Local 222 (herein called the Union), against Respondent; amended charge filed on May 29, 1981, in Case 7-CA-19356 by the Union against Respondent; charge filed on June 22, 1981, in Case 7-CA-19465 by the Union against Respondent; complaint issued against Respondent in Case 7-CA-19356 by the Regional Director for Region 7 on July 1, 1981; Respondent's answer filed in Case 7-CA-19356 on July 7, 1981; consolidated complaint issued against Respondent in both cases by the Regional Director for Region 7 on July 24, 1981, and amended on December 3, 1981; Respondent's answer to consolidated complaint filed on July 27, 1981, and to the amendment filed on December 9, 1981; hearing held in Detroit, Michigan, on May 24 and 25, 1982; briefs filed with me by the General Counsel and Respondent on or before June 21, 1982.

[2] Respondent admits that it is a Florida corporation which maintains its principal office in Miami, Florida, and is engaged throughout the United States in the retail sale of food and beverages. During the preceding calendar year, Respondent derived gross revenues in excess of $500,000, and purchased at its Detroit, Michigan, retail outlets directly from points and places located outside the State of Michigan goods valued in excess of $50,000. Accordingly, Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. I also find that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

ing their union activities and illegally prohibited employees from wearing union buttons at their place of employment. Respondent contends that it either suspended, discharged, or refused reemployment to the named individuals because they illegally invaded its premises, disrupted its business, and attempted to achieve union recognition by physically intimidating its managerial employees. Respondent denies any coercive interrogation of employees and asserts that it was privileged by special circumstances in forbidding its employees from wearing any special insignias or buttons, including but not limited to union buttons, on their uniforms. Upon these contentions the issues herein were drawn.

## FINDINGS OF FACT

### I. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is a Miami-based organization which operates fast food restaurants throughout the United States. At the time of the events in this case, it operated 38 such restaurants in the metropolitan Detroit area, including Restaurant 768 located at 6835 Michigan Avenue, near the corner of Martin Street.[3] The normal business hours at Restaurant 768 are from 10:30 a.m. until midnight. During this period of time the restaurant regularly serves about 300 customers. Its busiest hours are at lunchtime, which runs between 11:30 a.m. or 12 noon until about 2 p.m. During that period of time about 10 employees are on duty, either working in the kitchen, as cashiers, waiting on customers, as a hostess, or at the drive-thru window. Many of its employees work part time. None of them are unionized.

On Thursday May 28, 1981, at or about 11:30 a.m., a number of off-duty employees, in the company of union organizer Keith Kelleher and possibly a few other individuals who were not employees of Respondent, entered Restaurant 768, went through a door leading from the dining area to the kitchen, and moved toward the back of the kitchen in the direction of the manager's office. Kelleher asked employees who were on the clock to join them, and a few, including discriminatee Cynthia Diane Williams, did so.

The general outline of what transpired thereafter is not substantially controverted, although a few details may be in dispute. Assistant Manager Bruce Hamilton held up his hands in order to block the forward progress of the group but he was unsuccessful in doing so. They reached the manager's office, a small room about 7 by 7 feet, and stood in the doorway of the office and in the areaway outside which leads from the kitchen to the back of the building. Restaurant Manager Peggy Amato, a woman of slight to medium build and about 25 years old, was at her desk in the office attending to some paper work.

Williams and former employee Luther Wyatt[4] came to the front of the crowd, which numbered about 17 to 20 people, and entered the office. Williams told Amato that the United Labor Unions represented the restaurant employees, exhibited to Amato a sheet of paper containing a proposed union recognition agreement, and asked her to sign it. Amato asked her to wait a minute and instructed the employees to go into the dining room, saying she would be with them in a minute. Williams left the office for a moment and reported Amato's response to Kelleher, who was standing outside the door. His reply was, "Bull." He told Williams to go back in and ask her again to sign it. Williams went back into the office and renewed her request. Amato again refused, saying she had no authority to sign. At this point, the crowd took up a chant, "Sign it, Peggy! Sign it!" and continued this chant for about 20 minutes.

The most reliable account of what happened thereafter came from Amato. She testified credibly that she picked up the phone and proceeded to dial "911," the police emergency number. Wyatt reached over, jerked the phone out of her hand, and pressed down the buttons on the phone cradle, thereby cutting off the call. He asked her not to call the police, saying that "We don't want any trouble. We just want to talk to you." At this point, Hamilton pushed his way into the room and stood between Wyatt and Amato. I credit corroborated testimony to the effect that Wyatt then pushed Hamilton and he fell back against her, knocking her out of her chair and on to the floor. While under the desk, she again dialed the police and was able to summon them to the restaurant. Hamilton ordered the employees to leave the office and return to work but no one complied with his order.

Amato remained in her office for the next few minutes until the police arrived. However, she instructed Hamilton to go immediately into the dining room and request all of the customers to leave. He did so and escorted about a dozen customers out of the building, locking the door after them. When the police arrived, Hamilton unlocked the door, let them in, and explained what was happening. The police officers entered the kitchen by leaping over the front counter, told the demonstrators they were trespassing, and ordered them to leave. Kelleher objected, saying that they were merely asking for union recognition, but the police were unimpressed with his argument. As a result of police prompting, all demonstrators who were not employees or who were off-duty employees left the restaurant while the others went back to their duty stations. Amato directed that half of the employees who were on duty be put on break and the others assigned to cleanup duty. She let the restaurant remain closed and phoned Respondent's central office to inform them what had happened and to request that company officials come to Restaurant 768 immediately. Within half an hour, Personnel Director Wendell Russell, his assistant, Barbara Vonderoe, and Regional

[3] In addition to company-operated restaurants, Respondent supervises a number of franchised Burger King outlets which are operated under the Burger King name by franchise operators. The restaurant in question was turned over to a franchise operator shortly after the incidents which occurred in this case.

[4] Wyatt worked for Respondent about 4 years and was a production leader at Restaurant 768 until about a week before this incident. Under an arrangement with Respondent's personnel manager, Wendell Russell, Wyatt and fellow employee Taylor McGill took short-term jobs with Michigan Thermal, a contractor who was remodeling another Burger King restaurant. The Michigan Thermal job paid considerably better than the minumum wage position which Wyatt held with Burger King. Both Wyatt and McGill had an understanding with Russell that, when the contractor's job was through, they could return to work for Burger King, either at the restaurant at Michigan and Martin or at another location. It is clear that, on May 28, Wyatt was not a Burger King employee.

Project Manager Gregg Barnhart arrived. Upon their arrival, they found the restaurant closed and some of the off-duty employees picketing on the sidewalk in front.

Barnhart had formerly been district manager and was at that time in a supervisory position over many of the employees who were on duty that day. During the course of the afternoon, he struck up conversations with several of them, including Williams. I credit her corroborated testimony to the effect that, referring to the demonstration, Barnhart asked Williams, "What's your problem?" suggesting that the employees had to have a problem if they wanted a union. He went on to ask what she thought a union could do for the employees. She replied that she was aware of some underhanded things that had happened to friends of hers and she complained that her own working hours had been cut. When he persisted in asking what the Union could do for the employees, she replied that it could guarantee the hours for full-time workers and could guarantee better pay and working conditions.

Employees Gloria Griggs, who was working at the drive-thru window and James Barrett, who was working in the kitchen, were present during this conversation. Griggs cautioned Williams not to answer any of Barnhart's questions because he was just trying to see what he could find out. Both Griggs and Williams were wearing small union buttons on the blouses of their uniforms. The buttons were yellow and green and were about an inch or two in diameter. They bore the initials "ULU" for United Labor Unions. Barnhart told them to remove the buttons and asked them if they knew they were breaking company policy by wearing union pins. Williams told him that if he wanted her to remove her button she would do so.

During the afternoon, Russell, Hamilton, and Amato held a conference about the incident. Russell was attempting to obtain the names of employees, both on and off the clock, who had participated in the incident. Because she had been confined to the office during the entire length of the demonstration, Amato's observations were somewhat more limited than Hamilton's. Collectively they came up with the names of Valencia Spight, Ada Quinn, Bruce Abbey, Dennis Sisk, Alexis Wyatt, Tony Burgos, Cynthia Diane Williams, and Luther Wyatt. All except Luther Wyatt, who was actually not employed, were suspended. When Amato and Hamilton found, as a result of further discussion, that they both had not seen Quinn and Sisk, these two were reinstated the following day without loss of pay. Spight, Abbey, Alexis Wyatt, and Burgos were suspended for a week and returned to work on June 5. Williams was told that she was suspended pending further investigation. A week later, Lewis Motto, the district manager, phoned her at her home and told her that she had been discharged. He said that the incident had been thoroughly investigated and that she was being discharged because she had refused an order from Brian Hamilton to return to her work station. Williams objected, denying that Hamilton had ever told her to return to work. Motto simply said that if she had any further problems, she should speak with Wendell Russell. She called Russell and argued with him about the discharge but to no avail.

In early June, the Michigan Thermal job on which Wyatt was working ran out and he wanted to return to work for Respondent. He asked Amato for a job on two different occasions but she told him that she had nothing available and referred him to Russell. Wyatt met Russell in the parking lot of the restaurant and told him he would like to return to work. Russell declined his request, saying to Wyatt that his participation in the demonstration on May 28 amounted to a breach of trust and that he (Russell) could not in good conscience refer him for employment to any restaurant manager after what had happened at Restaurant 768.

### C. *Analysis and Conclusions*

#### 1. The suspensions, discharge, and refusal to reemploy participants in the May 28 incident

The General Counsel and the Charging Party contend that the participants in the so-called recognition demonstration of May 28 were engaged in protected concerted activities. Since they were either suspended, discharged, or denied reemployment because of their participation in this activity, they were denied rights guaranteed to them by Section 7 of the Act. There is no dispute that the activity in question was concerted and that it was orchestrated by the Union beginning several days before it took place. The question remains whether the activity was also protected.

In order to achieve recognition, a large number of boisterous individuals came into Respondent's premises as a group at a time when customers were being served, gained entry to the restricted kitchen and administrative portion of the restaurant, and stridently presented their demand for recognition to the restaurant manager. She told them she had no authority to grant their request. Both she and the assistant manager directed them to leave the area where they were congregating. They refused both instructions.

Instead, they began to chant in unison their demand for recognition and kept up their chant, "Sign it, Peggy! Sign it!" for about 20 minutes. They pinned the restaurant manager in her tiny office, attempted to prevent her from calling the police, jostled the assistant manager, and behaved in a thoroughly menacing manner until the police arrived and forced them to vacate the building. After being instructed to leave by Amato and Hamilton, they became trespassers when they refused to comply and were thereafter engaging in criminal activity, not protected activity. The Act does not sanction attempts to achieve recognition by physical intimidation, and it is just such intimidation to which the demonstrators resorted to on the occasion in question. Respondent was well within its rights to discipline any and all of the participants in this demonstration in any manner it saw fit. It was free to pick and choose whom it wished to discharge and whom it felt some lesser penalty was appropriate to achieve the end of maintaining order in its establishment. Accordingly, so much of the consolidated complaint which alleges that named employees were suspended, discharged, or denied reemployment because they engaged in protected concerted activities or union

activities must be dismissed. *G.T.A. Enterprises, Inc. d/b/a "Restaurant Horikawa,"* 260 NLRB 197 (1982).

2. The interrogation of Cynthia D. Williams by Gregg Barnhart

I have credited corroborated testimony to the effect that, following the incident when former district manager and then Regional Project Manager Gregg Barnhart was summoned to Restaurant 768, he questioned Williams concerning her union sympathies and activities. Specifically, Barnhart asked her what her problem was, suggesting that she had to have a problem if she was a union sympathizer and further questioned her concerning what she thought a union could do for employees. These questions were being asked by a high company official during a period of time when Williams and others were under investigation for possible company discipline. Such interrogation is coercive and violates Section 8(a)(1) of the Act.

3. The instruction by Barnhart to remove union buttons from company uniforms

All of Respondent's food handling employees throughout the United States are provided with identical uniforms which they are required to wear on the job and which they are required to keep in a neat and well pressed condition. There is a company regulation, set forth in a handbook which is provided to all employees, which states:

> Good grooming is especially important in a restaurant. Not only does it reflect your pride in your work and the restaurant—but it also affects the opinions formed by customers.
>
> Therefore, all employees are expected to present a clean and professional appearance.
>
> Specific guidelines to follow are:
>
> —Approved uniforms and hats must be clean and worn properly at all times.
> —Only company approved name tags, buttons and alterations in uniforms are allowed.

On May 28, both Williams and Griggs were wearing small yellow and green union buttons on their uniforms and were instructed by Barnhart to remove those buttons. They complied with his instruction. It is this instruction which the General Counsel, in the amendment to the consolidated complaint, contends is a violation of Section 8(a)(1) of the Act.

The Supreme Court long ago confirmed the Board's determination that the wearing of union buttons at the work place is, in the absence of unusual conditions, a right protected by Section 7 of the Act. *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793 (1945). Respondent's position is premised upon the contention that unusual or special conditions exist here which warrant its refusal to permit employees to wear union buttons on the job. It notes that its employees are required to wear uniforms, that its standard nationwide regulations forbid the attachment to company uniforms of any buttons or insignias which are not issued by the Company, and that such regulations are justified because its employees meet the public on a regular and recurring basis, so a neat, standard appearance of its food handlers is essential in establishing and preserving its image as a clean and professional purveyor of prepared meals.[5]

In applying the general rule on the right to wear union buttons and in evaluating claims of special conditions warranting a restriction on this right, the Board originally stated that a clear distinction exists between employees whose duties bring them into regular and frequent contact with customers and those whose duties do not require them to meet the public. *Floridan Hotel of Tampa, Inc.*, 137 NLRB 1484 (1962). See also *N.L.R.B.* v. *Harrah's Club*, 337 F.2d 177 (9th Cir. 1964). Later cases seemed to indicate that meeting the public is not, in and of itself, a special circumstance which would permit an employer to direct its employees to refrain from wearing union buttons on the job. *Eckerd's Market, Inc.*, 183 NLRB 337 (1970); *Consolidated Casinos Corp., Sahara Division*, 164 NLRB 950 (1967). Still later cases indicate that a distinction can properly be made between employees who regularly meet the public and those who do not in determining whether special circumstances exist permitting a nondiscriminatory restriction on the wearing of union buttons. *United Parcel Service, Inc.*, 195 NLRB 441 (1972); *Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company*, 256 NLRB 520 (1981). I take the holding in *United Parcel* and *Great Western Coca Cola* to be the law at this time and will apply this distinction in determining whether special circumstances existed which permitted Barnhart to direct Williams and Griggs to remove the union buttons from their uniforms.

On the day in question, Williams was assigned to work in the restaurant's kitchen preparing hamburgers and french fried potatoes. She had little or no contact with customers and was assigned to work in a restricted area remote from the view of the general public. On the other hand, Griggs was assigned to the drive-thru window. She greeted customers who drove up in their automobiles, took orders, handed orders to customers, and made change. She was in regular contact with the general public throughout the day. Applying the "special circumstances" rule, as recently interpreted, Respondent had no justification in restricting Williams from wearing a union button on her uniform based upon its desire to establish and protect its public image, inasmuch as Williams worked in the kitchen, did not come into contact with the public, and was rarely, if ever, seen by the public in the performance of her duties. Accordingly,

[5] I place little reliance on the General Counsel's alternative argument that Respondent disparately applied its general regulation, permitting employees to wear nonunion-related buttons and insignias on their uniforms but restricting them in the wearing of union buttons. Two witnesses testified that they have either seen or have personally worn buttons to work wearing such inscriptions as "Kiss Me, I'm Polish," or containing fuzzy, smilely faces. These rare and incidental departures from the norm do not establish a company practice, either locally or nationally, of permitting deviations from its published rule. Amato testified credibly that she repeatedly warned employees that the wearing of buttons and insignias, even including religious insignias, violated company policy and regularly required employees to remove such insignias while at work.

when Respondent directed her to remove her union button, it was interfering with a right protected by Section 7 of the Act and violated Section 8(a)(1) of the Act. With respect to Griggs, I come to a different conclusion. She regularly met and dealt with the public in the performance of her duties, so Respondent's concern for its image and the possible detraction therefrom occasioned by the wearing of unauthorized buttons and insignias on her uniform was well founded. According, I would dismiss so much of the Amended Consolidated Complaint as is directed to Barnhart's instruction that Griggs remove a union button from her uniform.

Upon the foregoing findings of fact and upon the entire record herein considered as a whole, I make the following:

## CONCLUSIONS OF LAW

1. Respondent Burger King Corporation is now, and at all times material herein has been, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Labor Unions, Local 222, is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating employees concerning their union sympathies, and by instructing employees who are not engaged in meeting and serving customers to refrain from wearing union pins at their workplace, Respondent herein has violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## THE REMEDY

Having found that Respondent herein has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to post the usual notice, informing employees of their rights and of the results in this case. Because Restaurant 768, where the unfair labor practices in this case were committed, is no longer operated by Respondent, it will be impossible to direct the posting of a notice at that location. Accordingly, I will recommend that the notice in this case be posted at all of Respondent's company-operated restaurants in the metropolitan Detroit area.

Upon the foregoing findings of fact, conclusions of law, and the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

## ORDER[6]

The Respondent Burger King Corporation, Detroit, Michigan, its officers, agents, supervisors, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union sympathies.

(b) Instructing employees who are not engaged in meeting and serving customers to refrain from wearing union buttons and other union insignias at their place of work.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Post at its company-operated resturants in the Detroit metropolitan area copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that, insofar as the consolidated amended complaint alleges matters that have not been found to be violations of the Act, the said complaint is hereby dismissed.

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[6] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."